

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 963

IN THE MATTER OF:

Served July 14, 1969

Order of Investigation of )  
Fares of D. C. Transit )  
System, Inc. )

Docket No. 194

On December 23, 1968, we issued our Order No. 900 in the above-captioned proceeding. That order authorized certain fare increases for D. C. Transit System, Inc. Shortly after the close of business on January 22, 1969, the thirtieth day following issuance of Order No. 900, an application for reconsideration on behalf of Joel Yohalem was placed under the Commission's door, where it was observed about an hour later by a Commission staff member.

The Commission believed that its rules, and the applicable administrative law, required that the application be dismissed as untimely filed. Hence, we issued our Order No. 911 dismissing the application. That action was confirmed in several subsequent Commission orders in which applicant sought to have us set aside our original action. Throughout these actions, we expressed our regret at the existence of what we felt was a procedural defect which precluded the acceptance of the pleading for filing.

Subsequently, the applicant took the matter to the court of appeals, which ruled in Yohalem v. WMATC, No. 22,865, decided June 13, 1969, that the law was not as we had thought it to be. Because of the fortuitous circumstance that a staff member observed the papers by the door shortly after the close of business, the court ruled that the application for reconsideration could be regarded as timely filed. The court held its proceedings in abeyance until we issue an order considering the application for reconsideration on its merits. Hence, we now turn to consideration of that application.

I

The first point raised by applicant is the claim that reasonable notice and opportunity to be heard were not afforded prior to issuance of Order No. 900. There is no question that the period of notice was relatively brief. We issued our Orders No. 894 and 895, raising the questions ultimately acted upon in Order No. 900, on December 13, 1968. At that time we set the hearing for January 14, 1969, thus providing for thirty days notice. However, on December 16, 1968, D. C. Transit filed a motion with the Commission seeking an earlier hearing date. In that motion, D. C. Transit represented that its financial condition was "so precarious that Transit will not be able to continue operations and maintain financial stability"<sup>1/</sup> until the conclusion of the hearings then scheduled to begin on January 14, 1969. This was a serious claim, indeed, and one which could not simply be ignored. We asked our staff for their knowledge as to D. C. Transit's financial condition at that time and they confirmed to us that the company was in serious difficulties.

Information available to the staff of the Commission indicated that the "current position" (excess of current assets over current liabilities) of the company had deteriorated to a dangerous level -- with liabilities exceeding assets by 500%, as follows:

|                    | <u>Current<br/>Assets</u> | <u>Current<br/>Liabilities</u> |
|--------------------|---------------------------|--------------------------------|
| September 30, 1968 | \$2,838,009               | \$13,583,637                   |
| October 31, 1968   | \$2,058,635               | \$12,792,547                   |
| November 30, 1968  | \$2,333,365               | \$13,222,978                   |

One result of the ongoing fiscal crisis was the inability of the company to meet its payrolls on time, due to lack of cash in bank, as follows:

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<sup>1/</sup> Motion by D.C. Transit System, Inc., for an Immediate Hearing and, Pending Such Hearing, for an Interim Order Adjusting its Schedule of Fares, filed December 16, 1968, p. 1.

|  | <u>Date Due</u> | <u>Date Paid</u> | <u>Amount</u> |
|--|-----------------|------------------|---------------|
| Union Operators' payroll<br>for October 12, 1968 | 10/23/68        | 10/25/68         | \$421,023.70  |
| Non-Union Employees'<br>payroll for              |                 |                  |               |
| October 19, 1968                                 | 10/24/68        | 10/25/68         | \$101,651.79  |
| December 14, 1968                                | 12/19/68        | 12/20/68         | \$100,868.53  |

By December 1968, the company appeared to be developing a fiscal emergency. Each month it experienced a worsening net loss as follows:

For the month of:

|           |        |              |
|-----------|--------|--------------|
| September | (Loss) | \$100,189.63 |
| October   | (Loss) | \$ 20,402.52 |
| November  | (Loss) | \$227,768.26 |

The Revenue Passenger experience, per attached "Report By Weeks" for 1968, showed sizeable percentage declines in revenue passengers, particularly beginning with the week ended November 30 and during the first three weeks of December.

At the same time, revenues remained substantially below the \$685,000 level. This was the amount required by the company if it were to meet its current operating needs on a break-even basis.

After careful consideration, we issued our Order No. 896 on December 16, 1968, advancing the hearing date from January 14, 1969 to December 19, 1968. Thus, the hearing was held six days after the Commission indicated that a hearing would be held and three days after the date was finally fixed. As previously noted, this was relatively brief notice.

Applicant makes no claim that this period of notice was contrary to Commission regulations, apparently recognizing that our Rule 6-01, while providing for normal notice of 25 days, clearly provides that the Commission may set a shorter period by appropriate order. The Compact sets no specific notice period, providing only that notice be "reasonable." See Compact, Article XII, Section 6(b). This, then, is the question: Was the notice provided in this proceeding reasonable?

Given the circumstances prevailing at the time we set the hearing, we have no doubt that the notice we provided was reasonable. We must look at this question not as an abstract

question to be considered many months following our action but in light of the facts and circumstances which faced us when we were required to rule.

At that time, we took into consideration several factors in setting the hearing date:

(1) The company had represented in a formal pleading that its very ability to operate was threatened. We were thus faced with the possibility, at least, that the city might lose its vital transit service. This was a possibility that we had to treat in very careful and serious terms.

(2) While not forming any conclusions as to whether the claimed loss of service would actually occur, we did have available information from regular reports received in the course of our continuing regulatory responsibility which indicated that the company did face serious financial difficulties.

(3) The issue to be considered at the hearing was fairly limited in scope. We had just 60 days previously, in Order No. 880, established expense figures for the future annual period in our final disposition of D. C. Transit's rate application. We were allowing no return on equity, so rate of return complexities were not at issue. The only real question was the proper estimate of ridership levels during the future annual period.

(4) We had just concluded the proceedings on the D. C. Transit rate application and we had available a number of interested parties in that proceeding who were thoroughly familiar with the basic issues with which we were dealing. Several<sup>2/</sup> of those parties appeared at the December 19 hearing.

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<sup>2/</sup> Those appearing included Alfred Trask on behalf of the American University Park Citizens' Association and Friendship Citizens Association, Paul R. Webber III on behalf of the D.C. City-Wide Consumer Council and Diana Powell in her own behalf and "on behalf of others similarly situated."

(5) While the period of time between our order and the hearing was short, there was widespread notice through all news media. As it turned out, about one hundred people attended the afternoon session and many statements from non-formal parties were heard.

In short, the Commission was convinced that it faced a very serious situation. We took the action we felt was necessary to deal with that situation. Given the circumstances at hand, the notice we provided was reasonable and we will not reconsider our order on the basis of the notice provided.

## II

Applicant next argues that we had "prejudged" the issues in the proceeding, while disclaiming any argument that we had not treated those issues impartially. Applicant points out our reference in Order No. 900 to facts not of record in Docket No. 194 (the D. C. Transit application) as the basis for instituting the proceeding which led to Order No. 900.

The proceeding in which Order No. 900 was issued was instituted by the Commission pursuant to Article XII, Section 6(b) of the Compact. That section provides that the Commission may institute proceedings on its own initiative with a view toward making fare adjustments. Naturally, we would only institute such a proceeding on the basis of some indication of need therefor. Further, in initiating such a proceeding we would, of course, make reference to the circumstances which caused us to take that action. Our ultimate decision, however, could only be based on the facts actually developed on the record at the hearing called for by Section 6(b).

That is precisely what happened here. We had indications of a possible need for action. We instituted a proceeding to investigate the question, referring to the indications at hand. Our ultimate decision, however, was based solely and fully on the facts developed on the hearing record. We simply do not see how this could possibly be considered "prejudgment." We reject this argument as a ground for reconsideration.

### III

Applicant next suggests that we have no authority to increase fares in a proceeding instituted by our own motion. He refers to Article XII, Section 6(a) but simply ignores Section 6(b) which provides, in pertinent part

"Whenever. . . upon its own initiative. . . the Commission finds that any. . . fare. . . is unjust, unreasonable or unduly preferential or unduly discriminatory, the Commission shall issue an order prescribing the lawful fare. . . thereafter to be in effect."

This provides clear authority for us to act upon fares in a hearing instituted by us. Applicant apparently argues otherwise, relying upon FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956). That case, dealing with language similar to that of the Compact found in the Federal Power Act, does not hold that the provision in question does not empower the FPC to increase rates in a hearing instituted by it. It merely calls into question the factual predicate relied on by the FPC in determining, in that case, that the rate in question was "unreasonable." The Supreme Court clearly recognized the FPC's power to act in those circumstances where the statutory standard (i.e., a rate which is unjust, unreasonable or unduly discriminatory) is met.

We clearly so found in Order No. 900 and our finding is amply supported by the record. The record facts established that the fares then existing would not have produced revenues sufficient even to cover operating expenses and interest. The record also established that losses in past months had seriously weakened the company's financial condition and that its credit was seriously impaired. Having heard that evidence we expressed our concern for "the company's continued ability to provide the transit service so vitally needed by the community." Order No. 900, p. 6. That these findings and our ruling based thereon are consistent with the Supreme Court's view of the public interest is beyond doubt. See FPC v. Sierra Pacific Power Co., 350 U.S. 348, 355 (1956).

#### IV

Applicant next calls into question our use of the operating expense figures established in Order No. 880. Applicant claims that a decline in revenues must give rise to a decline in expenses. This contention is simply invalid. Assuming the same level of operating efficiency,<sup>3/</sup> the only significant means of reducing expenses is by a cut-back in service. No such cut-backs have been sought or authorized by this Commission. A passenger decline of the magnitude which D. C. Transit had suffered when spread over the entire system and the entire schedule does not permit any significant reduction in service and, thereby, of expense.

Applicant refers to a portion of our Order No. 880 in which we assumed, for purposes of discussion, that a 44% increase in ridership would entail a 22% increase in cost. Applicant seizes upon this statement as indication that half of Transit's costs vary with traffic volume. We should make it clear that the discussion in question was not based upon any study of variable or fixed costs but was an assumption of what was felt to be a conservative figure for purposes of discussion. That assumption, while useful in discussing the possible impact of a theoretical 44% increase in ridership, cannot be relied upon in any meaningful way in analyzing the impact of an actual 5% reduction in ridership.<sup>4/</sup>

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<sup>3/</sup> Applicant does not base his argument on the possibility of increased efficiency but on a necessary correlation between revenue level and expense level.

<sup>4/</sup> The foregoing discussion has treated applicant's argument on a prospective and theoretical basis and, we believe, is dispositive thereof. However, the peculiar procedural posture of this application is such that we now know facts which, had we considered this application when filed, would only have been conjecture. While not relying on these facts, it is interesting to point out that financial reports filed with the Commission indicate that D. C. Transit's operating expense has actually increased each month over the same month of the previous year. The increase is as follows:

|               |         |
|---------------|---------|
| October 1968  | - 11.4% |
| November 1968 | - 5.1%  |
| December 1968 | - 19.2% |
| January 1969  | - 9.3%  |
| February 1969 | - 2.4%  |
| March 1969    | - 7.4%  |
| April 1969    | - 16.4% |

V

Finally, applicant argues that a "riders' fund" should have been drawn upon in lieu of a fare increase. Applicant apparently did not understand the facts with regard to the riders' fund as they existed at the time of the issuance of Order No. 900 and at the time he filed his application.

The riders' fund which had been created as a result of the ruling in Bebchick v. PUC, 318 F.2d 187 (D.C. Cir. 1963), had been applied in lieu of a fare increase by our Order No. 564, dated January 26, 1966, and by December 31, 1966 the balance in that fund had been fully depleted. In Williams v. WMATC, \_\_\_ F.2d \_\_\_, CADC Nos. 20,200, et al., decided October 8, 1968, the court of appeals remanded certain issues to us for consideration. Depending upon our resolution of those issues, a new riders' fund might be created. However, until the issues are resolved, there is no certainty whatever as to the amount, if any, which would be in such a riders' fund. When we issued Order No. 900, and when applicant filed his application with us, D. C. Transit was seeking a writ of certiorari in the Supreme Court in the Williams case and the matter had not even been remanded to us.<sup>5/</sup> Thus, the plain answer to applicant's last contention is that when we issued Order No. 900, there was no riders' fund, and no way of knowing with certainty whether there ever would be a riders' fund. Thus, it could hardly have been error not to apply such a non-existent fund in lieu of a fare increase which we found in Order No. 900 to be necessary at that time.

VI

We welcome this opportunity to comment upon the merits of Mr. Yohalem's application and we hope that our views will be of assistance to the court of appeals, which expressed its wish to have them before it.

We might say, by way of summary, that Order No. 900 was our response to a situation in which we were seriously concerned about D. C. Transit's continued ability to provide its vital

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<sup>5/</sup> The proceeding was ultimately remanded to us on March 3, 1969. Prehearing conferences have been held and a hearing on the remand issues has now been set for July 17, 1969. Thus, we should be in a position to rule on the remand issues and take that ruling into account in considering the rate application filed by D. C. Transit on May 28, 1969.

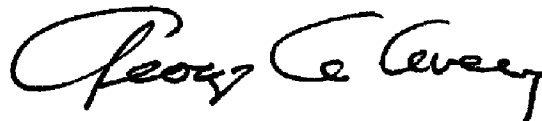


service. Information available to us from our normal and continuing regulatory activities indicated that we should undertake a prompt formal investigation of D. C. Transit's financial condition. In making that investigation, and in acting upon its results, we were acutely conscious of our responsibility to act in the public interest, both procedurally and substantively. We fully believe that we provided an ample opportunity to make a complete record on which to base our action. We know that our action was based solely on careful consideration of the record. It reflects our best judgment as to what was required in the public interest.

We feel that the events which occurred in the months since the entry of Order No. 900 confirm that we acted in the public interest. During the past several months, D. C. Transit has encountered some difficulties with its creditors, including a dispute with its union concerning payments to the pension fund and health and welfare fund which, for a time, threatened a work stoppage. Fortunately, that eventuality was averted. However, we feel certain that if we had failed to take account of the decline in ridership, as we did in Order No. 900, the consequent drain on the company's already weakened resources would have aggravated the crisis it subsequently faced and might even have led to a disastrous loss in service.

THEREFORE, IT IS ORDERED that the application for reconsideration of Order No. 900 filed by Joel Yohalem on January 22, 1969, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in dark ink, appearing to read "George A. Avery". The signature is fluid and cursive, with the first name "George" being more prominent and the last name "Avery" following in a similar style.

GEORGE A. AVERY  
Chairman

## D. C. TRANSIT SYSTEM, INC.

## REPORT BY WEEKS

## PASSENGERS AND PASSENGER REVENUE

1968

| Week<br>Ended                     | DISTRICT OF COLUMBIA     |                   |                |                             | SYSTEM             |                                   |                   |                                   |
|-----------------------------------|--------------------------|-------------------|----------------|-----------------------------|--------------------|-----------------------------------|-------------------|-----------------------------------|
|                                   | Number<br>Token<br>Fares | 25¢ Cash<br>Fares | Token<br>Ratio | Interline<br>Fares<br>.225¢ | REVENUE PASSENGERS |                                   | PASSENGER REVENUE |                                   |
|                                   |                          |                   |                |                             | Number             | Change<br>(Per Cent) <sup>a</sup> | Amount            | Change<br>(Per Cent) <sup>a</sup> |
| *1/6                              | 461,520                  | 1,181,330         | 28.1           | 68,279                      | 2,076,642          | (11.3)                            | \$520,026         | (0.8)                             |
| 1/13                              | 543,516                  | 1,341,065         | 28.8           | 82,632                      | 2,427,381          | (8.0)                             | 603,146           | 2.8                               |
| 1/20                              | 580,402                  | 1,402,154         | 29.3           | 85,375                      | 2,539,778          | (0.3)                             | 631,452           | 3.0                               |
| 1/27                              | 592,223                  | 1,388,570         | 29.9           | 84,913                      | 2,550,469          | (2.6)                             | 636,280           | 1.1                               |
| Fare increase - January 28, 1968  |                          |                   |                |                             |                    |                                   |                   |                                   |
|                                   | 25¢                      | 27¢ Cash<br>Fares |                |                             |                    |                                   |                   |                                   |
| 2/3                               | 1,186,961                | 769,304           | 60.7           | 83,277                      | 2,500,654          | (6.8)                             | 647,366           | 8.6                               |
| 2/10                              | 1,299,096                | 690,270           | 65.3           | 83,719                      | 2,568,080          | 0.1                               | 663,227           | 15.6                              |
| 2/17                              | 1,265,358                | 637,491           | 66.5           | 82,820                      | 2,466,192          | (6.3)                             | 634,095           | 9.1                               |
| *2/24                             | 1,198,168                | 642,908           | 65.1           | 73,832                      | 2,298,763          | 5.8                               | 598,722           | 10.6                              |
| 3/2                               | 1,294,817                | 640,457           | 66.9           | 82,944                      | 2,497,154          | (6.1)                             | 643,068           | 9.6                               |
| 3/9                               | 1,367,370                | 678,162           | 66.8           | 84,295                      | 2,598,684          | (3.8)                             | 672,937           | 12.7                              |
| 3/16                              | 1,304,643                | 646,340           | 66.9           | 83,543                      | 2,517,889          | (3.1)                             | 649,048           | 5.2                               |
| 3/23                              | 1,306,584                | 656,879           | 66.5           | 83,080                      | 2,531,254          | (2.6)                             | 651,851           | (0.4)                             |
| 3/30                              | 1,359,684                | 690,878           | 66.3           | 84,453                      | 2,631,495          | 4.3                               | 679,322           | 3.4                               |
| *4/6                              | 1,230,180                | 623,362           | 66.4           | 76,665                      | 2,380,931          | (13.8)                            | 612,349           | (11.4)                            |
| **4/13                            | 1,903,020                | 576,662           | 65.5           | 65,272                      | 2,045,843          | (24.3)                            | 539,464           | (20.3)                            |
| 4/20                              | 1,354,278                | 711,231           | 65.6           | 81,188                      | 2,451,032          | (8.7)                             | 660,521           | (1.5)                             |
| 4/27                              | 1,301,988                | 672,064           | 66.0           | 81,742                      | 2,491,926          | (4.5)                             | 647,654           | (0.6)                             |
| 5/4                               | 1,334,318                | 707,043           | 65.4           | 81,307                      | 2,583,415          | (3.4)                             | 665,811           | (0.5)                             |
| 5/11                              | 1,355,549                | 715,655           | 65.4           | 82,159                      | 2,626,223          | 0.8                               | 675,312           | 3.9                               |
| 5/18                              | 1,273,183                | 666,332           | 65.6           | 78,317                      | 2,474,486          | (5.7)                             | 637,578           | (2.7)                             |
| 5/25                              | 1,130,614                | 587,610           | 65.8           | 71,325                      | 2,204,426          | (14.5)                            | 566,464           | (12.2)                            |
| *5/1                              | 925,794                  | 512,187           | 64.4           | 58,545                      | 1,807,148          | (22.1)                            | 468,289           | (19.7)                            |
| 6/8                               | 1,205,285                | 682,700           | 63.8           | 74,601                      | 2,369,626          | (11.4)                            | 613,062           | (8.9)                             |
| 6/15                              | 1,260,293                | 735,215           | 63.2           | 76,179                      | 2,419,369          | (8.8)                             | 639,044           | (5.9)                             |
| 6/22                              | 1,293,376                | 745,953           | 63.4           | 77,581                      | 2,379,356          | (6.7)                             | 639,476           | (3.6)                             |
| 6/29                              | 1,308,887                | 738,693           | 63.9           | 79,864                      | 2,426,493          | (9.2)                             | 649,144           | (5.8)                             |
| *7/6                              | 1,151,479                | 675,684           | 63.0           | 67,078                      | 2,163,667          | (5.5)                             | 576,817           | (1.8)                             |
| 7/13                              | 1,349,325                | 758,319           | 64.0           | 75,789                      | 2,512,318          | (5.0)                             | 669,694           | (1.2)                             |
| 7/20                              | 1,323,294                | 751,472           | 63.8           | 76,854                      | 2,470,293          | (4.6)                             | 657,627           | (1.2)                             |
| 7/27                              | 1,312,113                | 742,882           | 63.8           | 79,890                      | 2,443,146          | (5.4)                             | 651,666           | (1.7)                             |
| 8/3                               | 1,323,656                | 723,053           | 64.7           | 77,103                      | 2,428,173          | (5.1)                             | 645,400           | (2.1)                             |
| 8/10                              | 951,136                  | 997,083           | 48.8           | 75,648                      | 2,299,525          | (9.5)                             | 627,741           | (5.1)                             |
| 8/17                              | 991,992                  | 959,639           | 50.8           | 72,839                      | 2,297,321          | (7.6)                             | 628,116           | (2.8)                             |
| 8/24                              | 963,154                  | 949,776           | 50.3           | 73,285                      | 2,257,071          | (2.8)                             | 618,735           | (2.2)                             |
| 8/31                              | 967,924                  | 965,769           | 50.1           | 74,723                      | 2,302,050          | (8.2)                             | 630,487           | (3.6)                             |
| *9/7                              | 829,846                  | 953,817           | 46.5           | 62,568                      | 2,132,344          | (8.2)                             | 573,174           | (4.5)                             |
| 9/14                              | 939,944                  | 968,954           | 49.2           | 72,290                      | 2,419,130          | (6.8)                             | 635,213           | (2.8)                             |
| 9/21                              | 954,834                  | 1,001,570         | 48.8           | 75,430                      | 2,510,072          | (5.9)                             | 657,832           | (1.6)                             |
| 9/28                              | 943,418                  | 974,468           | 49.2           | 75,213                      | 2,471,098          | (6.7)                             | 646,307           | (2.2)                             |
| 10/5                              | 959,242                  | 1,002,358         | 48.9           | 75,135                      | 2,529,488          | (6.2)                             | 661,805           | (2.0)                             |
| 10/12                             | 934,653                  | 959,990           | 49.6           | 74,297                      | 2,482,121          | (5.7)                             | 650,385           | (1.5)                             |
| 10/19                             | 925,519                  | 966,640           | 48.9           | 71,813                      | 2,444,540          | (8.4)                             | 639,933           | (4.1)                             |
| 10/26                             | 937,931                  | 969,260           | 49.2           | 73,359                      | 2,471,066          | (5.6)                             | 642,994           | (2.8)                             |
| Fare increase - October 29, 1968  |                          |                   |                |                             |                    |                                   |                   |                                   |
|                                   | 30¢ cash                 |                   |                |                             |                    |                                   |                   |                                   |
| 11-2                              | 931,348                  | 970,734           | 49.0           | 73,107                      | 2,468,033          | (8.1)                             | 668,066           | (1.0)                             |
| 11-9                              | 932,796                  | 888,364           | 51.2           | 72,386                      | 2,381,231          | (5.5)                             | 662,115           | (4.7)                             |
| *11-16                            | 838,777                  | 848,749           | 49.7           | 65,143                      | 2,167,202          | (18.1)                            | 604,979           | (8.6)                             |
| 11-23                             | 935,652                  | 890,156           | 51.2           | 73,821                      | 2,400,946          | 9.2                               | 668,977           | 20.8                              |
| *11-30                            | 773,785                  | 816,898           | 48.6           | 62,906                      | 2,025,326          | (22.8)                            | 575,725           | (12.2)                            |
| 12-7                              | 910,885                  | 923,250           | 49.7           | 72,571                      | 2,398,280          | (12.0)                            | 668,670           | (1.8)                             |
| 12-14                             | 886,393                  | 919,989           | 49.1           | 70,687                      | 2,371,911          | (10.5)                            | 663,282           | (0.5)                             |
| 12-21                             | 824,198                  | 947,990           | 46.5           | 68,757                      | 2,300,234          | (11.0)                            | 645,433           | (0.8)                             |
| Fare increase - December 24, 1968 |                          |                   |                |                             |                    |                                   |                   |                                   |
| *12-28                            | 498,439                  | 842,297           | 37.2           | 47,121                      | 1,581,092          | (14.1)                            | 489,091           | 2.7                               |

<sup>a</sup> Change from corresponding week previous year.  
 • Holiday  
 \*\* Civil Disturbance